

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: JAN 24 1997

Employer Identification Number: [REDACTED]
Key District: Northeast (Brooklyn NY)
Annual Tax Return Required: Form 1041
Tax Years Involved: [REDACTED]

Dear Applicant:

This letter constitutes our final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(9) of the Internal Revenue Code.

We make this ruling for the following reasons:

You do not meet section 1.501(c)(9)-3(f) of the Income Tax Regulations and section 1.501(c)(9)-3(b) of the regulations because your use of only whole life insurance policies, with substantial cash build-up values for your three members, goes beyond providing only current life coverage for your members in that it also provides a savings benefit for your members contrary to those regulations.

You do not meet section 1.501(c)(9)-4(b) of the regulations for any tax years when you provide a whole life insurance policy with cash build-up for only your one highly compensated member, [REDACTED], and not for your other two members, because a discriminatory benefit in favor of a highly compensated member is contrary to the regulation.

You do not meet section 1.501(c)(9)-2(c)(3) of the regulations because you have not established that you are an association of employees controlled by the employees rather than by the business owner, [REDACTED].

[REDACTED]

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the Form and for the tax years indicated above within 30 days from the date of this letter with your key district for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate Service Center indicated in the instructions for the returns.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your key District Director. We are sending a copy of this letter to your attorney.

Sincerely,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Technical Branch 5

cc: [REDACTED]

cc: DD, Northeast (Brooklyn, NY)
Attn: EO Group

Initiator

Reviewer

[REDACTED]

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: [REDACTED]

Employer Identification Number: [REDACTED]

Key District: Northeast (Brooklyn, NY)

Tax Years Involved: [REDACTED] and Subsequent

Annual Return Required: Form 1041

Dear Applicant:

We have considered your Form 10, Application for Recognition of Exemption under Section 501(c)(9), requesting your exemption from federal income tax as a voluntary employees' beneficiary association under section 501(c)(9) of the Internal Revenue Code.

You are a trust created and effective as of [REDACTED]. Your exemption application, Form 1024, was filed by postmark of [REDACTED]. Your annual accounting periods and tax years end on December 31.

[REDACTED], is the sole owner of the applicable for-profit employer: the corporation "[REDACTED]". The trustee of this trust is listed as [REDACTED], who, we understand, is a relative of the physician-owner.

You indicate that you provide only life insurance coverage. The life coverage is provided for [REDACTED] persons who work for the professional corporation, including the physician-owner of the business, as shown below:

Name	Born	Life Benefit	Annual Compensation
[REDACTED] (sole employer/owner)	[REDACTED]	\$[REDACTED] Whole Life	\$[REDACTED]
[REDACTED]	[REDACTED]	\$[REDACTED] Term Life	\$[REDACTED]
[REDACTED]	[REDACTED]	\$[REDACTED] Term Life	\$[REDACTED]

Your latest additional information letter to us of [REDACTED], represents that all participants, instead of only the business owner [REDACTED], will have their insurance coverage provided by means of whole life policies, instead of term life insurance policies. Also, you note that no death benefits have in fact yet been paid since the creation of this trust.

Your position is that the owner of this corporation receives no more than one-half of the total life insurance coverage, and that there has been, and will be, no special or disproportionate benefit paid to the physician-owner. Also, no death benefits have yet been become payable.

Section 501(c)(9) of the Code provides for the exemption from federal income tax of a "voluntary employees' beneficiary association" which provides for the payment of proportionate life insurance benefits to its members, if no part of its net earnings inures (other than by such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(b) of the Income Tax Regulations provides that prohibited inurement occurs where any benefits are disproportionate in favor of highly compensated individuals, officers, or shareholders.

Section 1.501(c)(9)-2(c)(3) of the regulations indicates that an exempt voluntary employees beneficiary association must be controlled on behalf of its membership and that whether control by, or on behalf of, the membership exists is a question to be determined with regard to all of the facts and circumstances.

Revenue Ruling 85-199, 1985-2 C.B. 163, holds that there is no association of employees under section 501(c)(9) of the Code where the only person benefitted is one dentist who is the owner of the applicable professional corporation.

In your case, we conclude that your trust's earnings, if any, will inure, within the intent of the above section 1.501(c)(9)-4(b) of the regulations, to the benefit of the highly compensated physician owner of the employer corporation, [REDACTED], based upon at least the following considerations:

First, the age of the business owner, born in [REDACTED], in comparison to the two other covered persons, born in [REDACTED] and [REDACTED], suggests that the allocable life insurance premiums for the owner are higher than for either of the other two persons.

Second, this same difference in ages in favor of the highly compensated shareholder, together with the physician owner's ability to terminate the business and, thus, this trust at his sole discretion or at his investment or retirement convenience indicates that the trust's term of existence and control is disproportionately set in favor of the business owner rather than the members.

Accordingly, we rule that you do not qualify for exemption from federal income tax under section 501(c)(9) of the Code. Therefore, you remain subject to the applicable requirements for filing federal income tax returns.

You have a right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person must have on file a proper power of attorney, such as Form 2848, and otherwise qualify under our Conference and Practice Procedures.

Also, you should include in any protest all of the documents needed to verify for the application file the changes represented in your latest letter of [REDACTED].

If you submit a protest statement with respect to this case, please address your envelope to:

Internal Revenue Service
Exempt Organizations Technical Branch 5
[REDACTED]
1111 Constitution Ave., N.W.
Washington, DC 20224

If we do not hear from you within 30 days, this ruling will remain in effect, and a copy will be forwarded to your key district office for exempt organizations in Baltimore. Thereafter, any questions about this federal income tax matter or the filing of federal tax returns should be addressed to that key district office. We are sending a copy of this letter to your attorney.

Sincerely,

[REDACTED]
Chief, Exempt Organizations
Technical Branch 5

cc: DD, Northeast (Brooklyn, NY)
cc: [REDACTED]

Initiator

Reviewer